

The Effective Assessment of Clinical Legal Education

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Introduction

In January 2003, a new unit was established under the auspices of the Human Rights and Social Justice Research Institute of London Metropolitan University to deal with human rights cases from Russia (see Leach, 2003). The new unit, the European Human Rights Advocacy Centre (EHRAC), is assisting lawyers and non-governmental organisations based in Russia to utilise the European Convention on Human Rights (which Russia ratified in 1998) by providing advice and assistance in taking cases to the European Court of Human Rights. By March 2003 EHRAC was already advising on cases alleging very serious human rights abuses arising out of armed conflict in Chechnya and the first (law) students at London Metropolitan University had begun to assist EHRAC's staff. One of the goals of EHRAC is, in due course, to introduce aspects of 'clinical legal education' into the curriculum of students studying human rights law, practice and theory.

The Experience of Clinical Legal Education in the UK

Clinical legal education has been defined by Brayne *et al* (1998, p. xiii) as "learning by doing the types of things that lawyers do". Its primary aims are said to be students' development of "critical and contextual understanding of the law as it affects people in society". To date clinical legal education has not been adopted by many law departments within UK universities. Brayne *et al* (*ibid.*) argue that the legal clinic's time has come and they espouse the merits of active student learning within real-life clinics and the benefits of providing students with motivation and skills of analysis, reflection and self-reliance. According to Grimes (1995), the learning experience for students in live-client clinics "represents a qualitative leap from simulated models". My own experience certainly bears this out. Working with (both highly qualified and less experienced) "legal interns" at London-based legal human rights organisations has shown that such people are highly motivated and are capable of producing high quality work, if appropriately supervised.

The tasks which students can be asked to carry out in a legal clinic are wide-ranging, including legal research, drafting legal submissions, advising clients in person, drafting letters of advice, assessing evidential issues and considering issues of professional ethics. These tasks require consideration of both substantive and procedural issues, as well as evidential matters. Legal clinics are, in essence, an extension of a 'problem-based' approach to learning and teaching.

As for the overall objectives of legal clinics, BurrIDGE *et al* (2002, p. 34) suggest that this will "define the extent of clinical involvement – whether it is to provide an understanding of the main concepts, methods and functions of law as a social force or

whether it is to equip future practitioners with the knowledge and ability to perform specific roles". They argue that "most undergraduate programmes espouse both objectives, but most also reject an approach that is solely directed at the accomplishment of professional tasks and responsibilities".

Assessment in Practice

If it is correct that the converse of the notion that students value what is assessed is also true (i.e. that they do not value what is not assessed), then I would argue that assessment must be an inherent aspect of a legal clinic from the outset, to avoid students (and staff) not taking such clinics seriously as part of the education of law students.

The means of assessment should encourage in students a 'deep' approach to learning, as opposed to 'surface' or 'strategic' approaches – indeed, Grimes (1995) argues that clinical legal work is "deep learning at its best". Assessment methods should seek also to encourage active and independent learning, which in turn fosters self-motivation (Entwistle, 1996, p. 98). To achieve a deep learning approach, assessment must be perceived as being 'relevant' (Entwistle and Ramsden, 1983). Assessment should also be an integral part of the work of the legal clinic – not merely an "add-on". As BurrIDGE *et al* (2002, p. 54) argue, "it should be an integrated and largely indistinguishable part of the learning and teaching process".

Clinical units, I suggest, should also seek the diversification of assessment, by adopting methods which do not replicate the usual means of assessment in UK law schools through examination or coursework, the effectiveness of which has of course been questioned because of perceived problems of achieving consistency and reliability (see Elton, 1987). In seeking diversification, BurrIDGE *et al* (2002, p. 72) argue that "law teachers need to relinquish some of their power as the 'keepers' of knowledge and adopt a more facilitative role such that students are encouraged to seek out information for themselves". This may include the adoption of, for example, self and peer assessment and oral assessment.

Since students will be researching different cases and problems, each involving very diverse issues, law clinics are likely to encourage an individual perspective, if not necessarily a critical one, as such. A critical perspective may, however, be integral to a clinic such as EHRAC that deals with human rights concepts, in that, as Whitty *et al* (2002) posit, the teaching of human rights offers a unique opportunity to pursue critical theory for the very reason that concepts such as equality, power, democracy and justice are integral to it.

Allied to these issues, is the importance of improving the quality of feedback, by providing it to students at a time when it can be taken on board and used by the student to develop, avoiding negativity and finality (Boud, 1995). The *QAA Code of Practice on Assessment* also requires that feedback should promote learning and facilitate improvement (precept 12).

Applying Principles of Assessment: Assessment within legal clinics

The guidelines on *Model Standards in Clinical Legal Education* of the *Clinical Legal Education Organisation* (CLEO, 1995) stress the importance of the link between assessment and learning outcomes, as well as the need for both staff and students to be clear as to the means of assessment within the unit. The *Model Standards*

advocate that assessment should be formative and “an integral part of the learning experience”.

In order to ensure the validity of the means of assessment within a legal clinic, it is necessary to ensure that the assessment methods are designed to measure achievement of the clinic’s objectives. Brayne contrasts ‘vocational’ objectives of a clinic, such as developing and demonstrating skills of interviewing and advocacy, with the objectives of a more academic clinical programme, such as learning about access to justice, its limits and scope for improvement. If a clinic’s objectives include these broader ‘academic’ aims, then, he contends, appropriate measuring devices are needed to enable a student to show “an understanding or competence that probably cannot be evidenced simply by looking at the work that was done for the client” (Brayne *et al*, 1998).

With regard to the reliability of assessment within a law clinic, there is the problem of seeking to ensure that students have similar experiences, so that assessment can be fair. Another issue that Brayne identifies is the extent of the supervisor’s input. For assessment purposes, clearly the supervisor’s input has to be disentangled from that of the student, an exercise that should be quite possible for the supervisor, but far less so for any external assessor.

The *Report of the 2002 CLEO Conference* (CLEO, 2002) stresses the importance of developing appropriate methods of assessment within legal clinics:

“Experience suggests that students want to be assessed. They put considerable effort into the clinic and produce, in consequence, largely impressive results. Why should they not get credit for this?”

The most popular means of assessment within UK University legal clinics include:

- *Journals, portfolios and diaries* for reflecting on both individual and shared experiences, and for formative and summative assessment. These techniques can build on assessments outside the clinical legal context. For example, if students are asked to draft a research report, the starting point could be a ‘real’ case or situation which the student has experienced within the legal clinic. In one example (the Northumbria Law School Clinic) students’ portfolios are assessed in terms of the following: written communication; file and case management; interviewing; research; law office procedures and participation; and critical commentary.
- *Oral communication*: Assessment can be carried out not just of oral advocacy carried out for the purposes of the cases being conducted by the clinic, but also students can be asked to make presentations reflecting on the work they have carried out and ‘adding on’ their own perspective and critique from a more theoretical standpoint.
- *Group work*, which can be assessed through tutor observation of a group of students tackling a ‘real’ problem, together with self and/or peer assessment

Conclusion

It seems clear that clinical legal education is at the forefront of skills training for students within UK university law schools. Clinical legal work is motivating for students, not only because of the variety of work it provides for them, but also because of the satisfaction which can be achieved through providing advice to ‘real’

clients in 'real' situations: the work is perceived by students as being 'relevant' and 'useful'. The work in live-client clinics undoubtedly encourages a 'deep' approach to learning.

Law clinics predominate in the 'new' universities rather than the old, perhaps reflecting the more traditional, 'academic-based' approach to learning and teaching in law still prevalent in the older institutions. However, a lot of work still needs to be done to validate assessment methods within law clinics, as was acknowledged by the *Clinical Legal Education Organisation* at its 2002 annual conference.

Whilst seeking to avoid over-assessment, legal clinics can play a valuable role in the diversification of student assessment. The examples of assessment methods referred to above demonstrate a variety of possible means, including self- and peer-assessment techniques. Some may have implications for over-busy staff, nevertheless the integration of assessment methods is the key to achieving best practice within legal clinics. Assessment should be an ongoing process for students and staff alike, enabling them to reflect on and learn from their engagement with academic and experiential knowledge via real-life practice.

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Biographical note

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